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ABSTRACT

In 1979 the National Research Council established a panel to study testing of handicapped people for selection and placement purposes in educational and employment settings. The study involved the review of relevant literature, solicitation of pertinent information from organizations representing handicapped persons and from professionals involved in selection and placement both in education and employment, review of current legislation and existing data on the effects of current practices of testing handicapped persons, and analysis of strategies used by organizations and institutions to address the needs of handicapped persons. Analysis of data from the study resulted in the formulation of nine recommendations to the West Virginia Department of Vocational Rehabilitation concerning psychological testing of disabled populations. (Appendixes to this monograph include guidelines for reporting criterion-related and content validity, Equal Employment Opportunity Commission guidelines on employee selection, classified lists of representative tests, a list of psychological tests used in the Kanawha County School System in West Virginia, West Virginia State guidelines for administering psychological tests to disabled individuals, special provisions for handicapped individuals in Federal civil service employment regulations, lists of tests used with disabled persons receiving services at the West Virginia Rehabilitation Center, and discussions of selected court decisions pertaining to psychological assessment of handicapped persons.) (MN)

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ED267175

NON-DISCRIMINATORY

PSYCHOLOGICAL ASSESSMENT OF THE HANDICAPPED

MONOGRAPH

September 22, 1980

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NON-DISCRIMINATORY

PSYCHOLOGICAL ASSESSMENT OF THE HANDICAPPED

I. Overview

For a number of years, the West Virginia Division of Vocational Rehabilitation has recognized the importance of providing non-discriminatory psychological assessment procedures for the severely disabled. In the past the Agency has always attempted to utilize up to date technical knowledge in the psychometric field, while at the same time, recognizing the complexity of the issue.

This paper addresses the present state of knowledge, identifies some unmet needs, and presents a summary with recommendations for consideration.

Since the early 1960's there has been a clear national commitment to equality of opportunity, a commitment prompted by an expanding appreciation of human diversity and of the subtleties of discrimination. The federal government extended certain protections to a number of groups subjected to discrimination--racial and ethnic minorities, women, the aged, and more recently, individuals with handicaps. Federal regulations, which were intended to draw handicapped people into the mainstream of American life by assuring access to federally funded programs, specifically prohibited the use of psychological tests that adversely affected handicapped people.

In December 1979, the National Research Council established a Panel of the Committee on Ability Testing to study testing of handicapped people for selection and placement purposes in educational and employment settings. The study was supported by the Office for Civil Rights of the Department of Health, Education, and Welfare, which was charged with enforcing compliance with regulations implementing the Rehabilitation Act of 1973. The regulations required that psychological tests administered to a handicapped person must accurately reflect that person's abilities and not the impaired skills, unless the latter were what the test purported to measure. The regulations further prohibited for purposes of selection the identification of people with handicaps. These requirements were based on the assumption that handicapped people could be tested in a way that would not reflect the effects of their handicap and that the resulting test scores would be comparable to those of nonhandicapped people. However, there was reason to doubt that current psychometric theory and practice was sufficient to allow full compliance with these regulations.

Thus, the Panel will study the social, economic, legal, psychological, and psychometric questions that are relevant to determining what courses of action should be taken to address the needs of handicapped people in light of current testing technology, on the one hand, and federal requirements, on the other. The Panel will engage in activities such as the following: reviewing relevant published and unpublished literature; commissioning papers; soliciting relevant information from a variety of sources including organizations representing handicapped people, and those involved in selection and placement in education and employment; collecting information on the implementation of current legislation; reviewing existing data on the effects of current practices of testing the handicapped; and analyzing strategies used by organizations and institutions to address the needs of the handicapped.

The major product of the Panel will be a report released at the end of the two-year study, which will be comprised of three main sections: a full discussion of the Panel's inquiry into the various issues emerging from federal policy regarding equitable selection procedures for handicapped individuals; a detailed research agenda, which draws on an assessment of the state of psychometric theory and practice with regard to testing handicapped people; and recommendations for modifications in policies that would be consistent with the current state of psychometric theory and the best available practice for carrying out the spirit of the Rehabilitation Act of 1973.

A. Legal Background

Section 504 of the Rehabilitation Act of 1973 as amended and the Rules and Regulations implementing this Section addresses the issue of non-discriminatory psychological assessment. Such rules became effective June 3, 1977 and were published in the Federal Register, Volume 42, No. 86, Wednesday, May 4, 1977. These rules relate to nondiscrimination on the basis of handicap for all programs and activities receiving or benefiting from federal financial assistance.

Three specific subparts of Title 45 of the Code of Federal Regulations (CFR) are relevant to the issue of non-discriminatory psychological evaluation and assessment. These areas are:

1. Subpart B - Employment Practices, part 84.13;

2. Subpart D - Preschool, Elementary, and Secondary Education, part 84.35; and

3. Subpart E - Post-secondary Education, part 84.42.

Subpart B, part 84.13, employment criteria states:

a. A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

   (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and

   (2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

b. A recipient shall select and administer tests concerning employment so as best to ensure that when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicants or employee's impaired sensory, manual or speaking skills (except where those skills are the factors that the test purports to measure).

Section 84.13 (b) requires that a recipient take into account that some tests and criteria depend upon sensory, manual, or speaking skills that may not themsevles be necessary to the job in question but that may make the handicapped person unable to pass the test. The recipient must select and administer tests so as best to ensure that the test will measure the handicapped person's ability to perform on the job rather than the person's ability to see, hear, speak, or perform manual tasks, except of course, where such skills are the factors that the test purports to measure. For example, a person with a speech impediment may be perfectly qualified for jobs that do not or need not, with reasonable accommodation, require ability to speak clearly. Yet, if given an oral test, the person will be unable to perform in a satisfactory manner. The test results will not, therefore, predict job performance but instead will reflect impaired speech.

Subpart D, part 84.35, evaluation and placement states as follows:

(a) Pre-placement evaluation. A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education of related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall

(1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior,

(2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered,

(3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) ensure that the placement decision is made in conformity with 84.34.

(d) Re-evaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section for periodic re-evaluation of students who have been provided special education and related services. A re-evaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

Subpart E, part 84.42 addresses post-secondary education and reads as follows:

(a) General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) Admissions. In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Director to be available;

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory,

manual or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons: and

(4) Except as provided in paragraph (c) of this section, may not make pre-admission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

B. Recent Judicial Decisions Affecting the Rights of Disabled Individuals Relating to Non-Discriminatory Psychological Assessment

(1) Griggs vs. Duke Power Company, 401 U. S. 424 (1971). This case established a principle under Title VII of the Civil Rights Act of 1964 which prohibits employers from using tests or other selection criteria that screen out or tend to screen out handicapped persons unless the test or criterion is shown to be job related and alternative tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown to be available. This case is relevant to 84.13 (a), Subpart B relating to employment selection criteria.

(2) Mills vs. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.D.C. 1972); Pennsylvania Association for Retarded Children vs. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 279 (E.D. Pa. 1972); and Lebanks vs. Spears, 60, F.R.D. 135 (E.D. La. 1973). Subpart D, part 84.35 generally conforms to the standards established for evaluation, assessment and placement of handicapped persons within educational settings as defined by the three previously cited judicial decisions.

II. Testing and the Civil Rights of the Handicapped

A. Deafness

Because of their general retardation in linguistic development, deaf children and adults are usually handicapped on all verbal tests, even when the verbal content is presented visually. Therefore, our Agency and the West Virginia Rehabilitation Center, specifically, as one element of the State Agency, has made arrangements to especially train and prepare a clinical psychologist to psychologically evaluate individuals that are totally deaf or hearing impaired. There is a full-time psychologist presently employed at the West Virginia Rehabilitation Center, who has received specialized training at the University of Tennessee and the New York University Research and Training Center, serving in the area of deafness.

The following instruments are utilized in the psychological assessment of individuals with deafness or hearing impairments:

1. General Intelligence

   All Weschler Performance Scales, Ravens Progressive Matrices, the Revised Beta Examination (Form II), The Leiter International Performance Scale, and the Hiskey-Nebraska Intelligence Scale for the Deaf.

2. Personality

   Draw-a-Person Test or House-Tree-Person Test

3. Organic Brain Dysfunction

   Bender-Gestalt Visual Motor Designs and/or the Memory for Designs Test.

4. Achievement

   The Gates-MacGinitie Reading Test, The Wide-Range Achievement Test (arithmetic only)

5. Interest Inventories

   The Clinical Psychologist at the West Virginia Rehabilitation Center serving the deaf utilizes the California Picture Interest Inventory and the Wide Range Interest and Opinion Test (WRIOT)

6. College Entrance

   Institutions offering special programs for the deaf, substitute specialized institutional testing in lieu of the ACT.

B. Blindness

Testing the blind presents a very different set of problems from those encountered with testing the deaf. Oral tests can be most readily adapted for blind persons while performance tests are the least likely to be applicable. In addition to the usual oral presentation by the examiner, other suitable testing techniques have been utilized such as phonograph records, tape or wire recordings. Some tests are also available in braille. At the West Virginia Rehabilitation Center, the Clinical Psychologist utilizes the following psychological assessment procedures with clients with blindness and/or partially sighted clients.

1. General Intelligence

   a. Verbal Section of the WISC, WAIS, and WISC-R

   b. Haptic Intelligence Test for the Blind

   c. Mary K. Bauman Non-Language Learning Test

   d. Hayes-Binet Intelligence Test for the Blind (Interim Addition)

2. Personality

   a. Rotter Incomplete Sentence Blank

   b. Self-Descriptive Scales

   For the partially sighted, such instruments include the House-Tree-Person Test, the Thematic Apperception Test (TAT) and the Rorschach Ink Blot Test.

3. Organic Brain Dysfunction

   a. Wechsler Memory Scale

   For the partially sighted, other instruments to ascertain brain dysfunction include the Bender-Gestalt Visual Motor Test and the Memory for Designs Test.

4. Social Maturation

   a. Vineland Social Maturity Scale

5. Achievement

   a. Wide Range Achievement Test for the Blind (braille)---administered by the Vocational Evaluation Department

   b. Peabody Individual Achievement Test (PIAT)---for the partially sighted only.

The Agency also utilizes the American College Testing Program (ACT) for college bound students and this examination can be administered in braille. Other tests which are also administered in braille include the School and College Ability Test (SCAT), the College Board Scholastic Aptitude Test (SAT), and the Graduate Record Examinations (GRE). All of these examinations would be available to the rehabilitation counselor on an as-need basis for college bound students and/or students pursuing graduate school education.

C. Physically Handicapped

Although usually able to receive auditory and visual stimulation, the neurologically handicapped may have such severe motor disorders as to make either oral or written responses impracticable. The manipulation of form boards or other performance materials would likewise meet with difficulties. Additionally, working against time limits or in a strange surrounding often increases the motor disturbance in the neurologically handicapped. Some of the severest motor handicaps are found among individuals with cerebral palsy. Specialized psychological assessment procedures available at WVRC (Psychology Department) and also additionally to VR counselors in the field include some of the following:

1. The Leiter International Performance Scale

2. The Porteus Maze (particularly suitable for individuals with cerebral palsy)

3. Progressive Matrices

4. The Peabody Picture Vocabulary Test (PPVT)

5. The Columbia Mental Maturity Scale (CMMS) - this scale was originally developed for use with individuals with cerebral palsy.

III. Present Activities (Overview)

A. Education

The West Virginia Department of Education, Division of Special Education and Student Support Systems have promulgated standards for the assessment, placement and re-evaluation of physically and mentally handicapped students. (See Appendix E-1 and E-2, dated August 1979). These standards are in keeping with the rules and regulations for the implementation of PL-94-142, Education of Handicapped Children Act of 1975). Appendix D reveals the psychological instruments utilized by a large school system in West Virginia (Kanawha County) for the assessment of low-incidence severely disabled children. We can note the similiarity of assessment procedures utilized by the school system in West Virginia and the West Virginia Division of Vocational Rehabilitation for handicapped individuals.

B. Employment

Appendices A and B present the guidelines of the Office of Federal Contract Compliance (OFCC) and the Equal Employment Opportunity Commission (EEOC) on Criterion-Related/Content Validity and Employee Selection Procedures, respectively. These guidelines have been helpful to test publishers, employers, personnel officers, psychologists, management personnel, advocacy groups for the disabled, et. al.

C. American Psychological Association (APA) and the West Virginia Psychological Association (WVPA)

The American Psychological Association (APA) in 1978 had a total membership of 46,891. Of this number (46,891), only 892 or 1.9 percent were members of Division 22 of APA (the Division of Rehabilitation Psychology). Division 22 is a professional division within APA dedicated to specializing in the special needs area of the physically and mentally handicapped. Although small in percentage of total membership, Division 22 has for a number of years contributed significantly to improved psychological services for the handicapped.

The membership of the West Virginia Psychological Association (WVPA) at the Fall 1979 meeting in Morgantown, indicated an interest in providing future workshop sessions directed toward, "psychological assessment of low-incidence severely disabled individuals." The Program Planning Committee was charged with further

exploration of this possibility. At the WVPA Fall 1977 Meeting, Dr. McCay Vernon, a recognized clinical psychologist in the area of deafness and Dr. L. Leon Reid, clinical psychologist in the area of blindness presented professional workshop sessions.

D. Other

Various test publishers have been and are continuing to revise, update and develop new instruments for use in screening, referral and assessment of low-incidence severely disabled individuals. Examples of this effort include some of the following offered by the Psychological Corporation.

1. Boehm Test of Basis Concepts
2. Columbia Mental Maturity Scale (CMMS)
3. Metropolitan Readiness Tests
4. Stanford Early School Achievement Test (SESAT)
5. Arthur Point Scale
6. McCarthy Scales
7. WISC-R, WPPSI, WAIS-R
8. Stanford Achievement (for deaf, for blind)- In cooperation with Gallaudet College and American Printing House for the Blind
9. System of Multicultural Pluralistic Assessment (SOMPA)

Many of the preceding instruments have merit in the development and monitoring of Individualized Education Programs (IEP) and Individualized Written Rehabilitation Programs (IWRP).

IV. W. Va. Division of Vocational Rehabilitation

The State Agency encourages professional involvement and participation in WVPA and APA continuing education activities through the Staff Development Section. One staff psychologist at the West Virginia Rehabilitation Center has been provided specialized training in working with the deaf at the University of Tennessee and the New York University Research and Training Center in Deafness. Another staff psychologist at WVRC has many years of clinical experience in working with the blind and the physically severely disabled individual. Another psychologist serving the spinal cord injured client (WVRC) via an Innovation and Expansion Project is working on improved methods for psychological assessment of the spinal cord injured. Special adaptions of existing psychological instruments are being made by the use of electronic devices and telecommunications. Further research with the severely disabled motor and speech impaired individuals is indicated as a present unmet need.

Agency staff has provided technical help and consultation to the W. Va. Civil Service Commission regarding their Handicapped Employment Policy, pursuant to Section

504 of the Rehabilitation Act of 1973. This policy was adopted by the West Virginia Civil Service Commission February 1, 1979 and concentrates joint efforts (Civil Service System/DVR) on developing procedures for classification, selection and placement for mentally retarded individuals.

Vocational Rehabilitation counselors provide psychological testing as a part of their regular casework development when indicated on an individual client need basis. Thus, it is considered a part of the Vocational Rehabilitation counselor's job knowledge and operations to provide for routine psychological testing. This is especially important where a formal referral to a licensed psychologist is deemed unnecessary or impractical.

In addition to the tests listed below, each office has the book, How to Select, Administer And Interpret Psychological Tests, a programmed text developed by the Research and Training Center. There is an adequate supply of stop-watches at each office, which are required to properly administer the Wide Range Achievement Test, Revised Beta, Bennett Mechanical Comprehension Test, and the General Clerical Test. Each district office also has one tape recorder and five cassettes which are used to train all counselors in the administration of psychological tests.

Achievement: Wide Range Achievement Test (WRAT)

General Intelligence: Revised Beta and Slosson Intelligence Test

Personality Assessment: Mooney Problem Checklist

Vocational Interest: Kuder Vocational Interest Test and Wide Range Interest and Opinion Test (WRIOT)
Career Assessment Inventory (CAI)
Strong-Campbell, Form II (S-C, II)

Physical and Mechanical Principles: Bennett Mechanical Comprehension

General Aptitude: General Aptitude Test Battery (GATB)

Clerical Aptitude: General Clerical Test

Each counselor is trained to administer all tests which comprise the counselor psychological testing kit. Whenever possible and feasible, the counselor does his own testing. However, it is occasionally desirable to secure testing from those people qualified to administer individual tests and more complicated personality tests. Thus, each counselor must be sufficiently familiar with tests, testing procedures, and test interpretations to use intelligently the test results obtained from qualified examiners, as they oftentimes do not possess the counselor's understanding of the client and his problems.

In addition to the above, the WVDVR Agency has provided the VR field counselor with other support suggestions to insure quality psychological services. These include:

(1) Section 3303, WVDVR Case Services Manual, "Standards of Qualification and Performance of Psychological Service Providers;"

(2) Revised Directory, Licensed Psychologists, West Virginia;

(3) Section 9400, WVDVR Resources Manual, Psychological Services; and

(4) Section 3412, Case Services Manual, vocational and psychological assessment of clients for which a college degree is normally required, psychological testing of the deaf or blind client, and instructions on American College Testing (ACT) Assessment.

V. Recommendations

Various task-forces of the American Psychological Association (APA) on the testing of minority groups for both educational and employment purposes have studied test bias over the years. The problem of test bias is complex and is an area in which the statistically unsophisticated must step warily. It has been argued that there is no best single model for fair selection.

Some major provisions in the EEOC Guidelines should be noted. The Equal Employment Opportunity Act prohibits discrimination by employers, trade unions, or employment agencies on the basis of race, color, handicap, religion, sex, or national origin. It is recognized that properly conducted testing programs not only are acceptable under this Act but can also contribute to the "implementation of non-discriminatory personnel policies." Moreover, the same regulations specified for tests are also applied to all other formal and informal selection procedures, such as educational or work-history requirements, interviews, and application forms (Sections 2 and 13).

When the use of a test (or other selection procedure) results in a significantly higher rejection rate for minority candidates than for non-minority candidates, its utility must be justified by evidence of validity for the job in question. In defining acceptable procedures for establishing validity, the Guidelines make explicit reference to the Standards for Education and Psychological Tests (1974) prepared by the American Psychological Association. A major portion of the Guidelines cover minimum requirements for acceptable validation (Sections 5 to 9). It will be seen that the requirements are generally in line with good psychometric practice.

In the final section dealing with affirmative action, the Guidelines point out that even when selection procedures have been satisfactorily validated, if disproportionate rejection rates result for minorities, steps must be taken to reduce this discrepancy as much as possible. Affirmative action implies that an organization does more than merely avoiding discriminatory practices. Psychologically, affirmative action programs may be regarded as efforts to compensate for the residual effects of past social inequities. Such effects may include deficiencies in aptitudes, job skills, attitudes, motivation, and other job-related behavior. They may also be reflected in a person's reluctance to apply for a job not traditionally open to minority candidates, or in his inexperience in job-seeking procedures. Examples of affirmative actions in meeting these problems include recruiting through media most likely to reach minorities; explicitly encouraging minority candidates to apply and following other recruiting practices designed to counteract past stereotypes; and, when practicable, providing special training programs for the acquisition of prerequisite skills and knowledge.

The Standards for Educational and Psychological Tests (1974) adopted by the American Psychological Association should be closely adhered to, thus minimizing test bias toward the severely disabled individual. These standards apply to criterion measures only and support the idea of local, regional, and specific norms, even when genuine national norms are available. However, this is a relatively simple standard to state, but it often is difficult to apply. Because it is difficult to know the precise characteristics of the appropriate NORM group, it is unrealistic to expect that a test developer always would have provided the most appropriate

normative data. Even though some psychological tests have been "normed" with specific severely disabled populations much more remains to be done in this area. This is a very expensive, long-term research effort and modest accomplishments have been achieved in relationship to the overall need.

Overall, the West Virginia Division of Vocational Rehabilitation has kept abreast of the latest knowledge available in minimizing discriminatory practices in psychological assessment of the handicapped. Sharing of this staff paper with professional personnel of the Agency can contribute to increased awareness and concern of the Agency regarding this issue. Hopefully, some of the thoughts might stimulate further exploration, research, and professional development.

Because of the complexity of the issue discussed in this paper, it becomes necessary to continue to study, research, evaluate, and devote effort to this concern as an on-going process. However, there are specific recommendations and action steps which the WVDVR Agency will want to consider. These include the following:

1. Insure that all VR counselors are properly trained to utilize the present psychological instruments in the counselor's testing kit;

2. Insure that new and more relevant psychological instruments are added to the counselor's psychological testing kit as appropriate;

3. Continue to permit and support Agency licensed psychologists to specialize with various severe disability groups such as the blind, deaf, spinal cord injured, deaf-blind, and cerebral palsied;

4. Encourage psychologists employed by the Agency to perform mini-research studies regarding their clinical and experimental experiences with psychological assessment of the severely physically and mentally disabled;

5. Promote quality psychological assessment services for the severely disabled by the private psychologist practitioner;

6. Provide consultant and liaison help to the private psychologist practitioner in the unique and specialized assessment needs of the severely disabled via forums of the W. Va. Psychological Association;

7. Encourage clinical affiliation for psychology graduate students from Marshall University, West Virginia University, and the West Virginia College of Graduate Studies with the West Virginia Rehabilitation Center and Agency district offices;

8. Promote involvement of graduate and under-graduate psychology students to undertake small specific research studies in the area of psychological assessment of the severely disabled, and

9. Provide training for VR counselors to determine when an appropriate referral to a licensed psychologist is indicated.

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APPENDIX A

Guidelines for Reporting Criterion-Related and Content Validity (OFCC)[1]

Chapter 60—Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor

PART 60–3—EMPLOYEE TESTING AND OTHER SELECTION PROCEDURES

Guidelines for Reporting Criterion Related and Content Validity

ON February 14, 1973, notice of proposed rulemaking was published in the FEDERAL REGISTER (38 FR 4413) with regard to amending § 60–3.15 of Title 41, Code of Federal Regulations for the purpose of clarifying Federal contractors' existing obligations to report the validity of tests and other selection methods as required by 41 CFR Part 60–3. Interested persons were given thirty (30) days in which to submit written comments, suggestions, or objections regarding the proposed amendments.

Having considered all relevant materials submitted, I have determined that to effectuate the objectives of the proposal it would be more appropriate to amend 41 CFR 60–3.6, rather than 41 CFR 60–3.15 as originally proposed, since the purpose of the amendment is to clarify the manner in which evidence of validity is to be presented, and not to impose additional recordkeeping requirements.

For purposes of clarity, it has been determined that the different requirements for criterion-related validity and content validity should be stated sepa-

[1] From *Federal Register*, 1974, 39(12), 2094–2096.

rately. Specific requirements for construct validity studies are under consideration and may be added to 41 CFR § 60–3.8 at a later date.

Section 60–3.8 is hereby amended to read as follows:

§ 60–3.8 Presentation of evidence of validity.

(a) *Criterion-related validity.* Reports of criterion-related validity of tests and other selection methods, where required by this chapter, are to contain the following information:

(1) *Firm or organization and location(s) and date(s) of study.* If study is longitudinal, both testing dates and criterion collection dates or the time range within which these dates occurred must be shown (ESSENTIAL). If study was conducted at several locations, names of cities and states should be shown in addition to plant identification.

(2) *Problem and setting.* Explicit definition of purposes and brief discussion of the situation in which the study was conducted should be provided. Include description of existing selection procedures and cutting scores, if any, which were used.

(3) *Job analysis.* A full description of all important duties and tasks involved in each of the jobs on which research has been conducted and for which the test will be used must be provided (ESSENTIAL). Unless a general measure of job behavior (such as turnover or tenure) is used as a criterion, it is expected that the description of the duties performed by the incumbents on the job will also detail the level of difficulty at which the duties are performed, and those duties which are critical (i.e., must be performed competently if the job is to be performed in a satisfactory manner). This job analysis also should describe on what bases duties were determined to be critical, such as the proportion of time spent on the respective duties, their levels of difficulty, their importance, their frequency of performance, and other relevant factors. If a duty which occupies a high proportion of time is not deemed critical, the reasons therefore must be set forth. Published descriptions from industry sources or Volume I of the *Dictionary of Occupational Titles* are satisfactory if they adequately and completely described the job. If necessary a brief supplement to the published descriptions may be provided. (The requirements in this section are not intended to specify a particular method of job analysis. Any professionally recognized product and/or process oriented method of job analysis is acceptable if it is comprehensive and otherwise appropriate for the specific validation strategy used.) If two or more jobs are grouped for a validation study, a justification for this grouping as well as a description of each of the jobs should be provided.

(4) *Job titles and codes.* It is desirable that the job title used in company terminology plus the corresponding job title and code from United States Employment Service *Dictionary of Occupational Titles* (Third Edition) Volumes I and II, United States Government Printing Office, 1965, be provided. Where appropriate DOT codes and titles do not exist, a notation to that effect should be made.

(5) *Criteria.* Provide a description of all criteria of job related behaviors collected (including a rationale for what were selected as final criteria) and means by which they were observed, recorded, evaluated and quantified (ES-

SENTIAL). (To the extent possible this description should parallel the content validity justification described under "content validity" below.) An indication of the reliability coefficients and how they were established is desirable.

(6) *Sample.* A description of the ethnic and sex composition of the sample must be provided. (Minority group categories shown on EEO–1 should be used.) Also required is a description of how the research sample was selected and how it compares with employees in the job and with current applicants. Description of educational levels, length of service, and age is also desirable.

(7) *Number of cases.* Indicate the number of people in the sample, and the number of people in each of the subsamples (ESSENTIAL).

(8) *Predictors.* Commercially available tests should be described by title, form and publisher (ESSENTIAL). Other predictors, including privately constructed tests, interviewer's ratings, education and experience levels and composites of test batteries should be explicitly described (ESSENTIAL). The inclusion of a rationale for each predictor studied is desirable.

(9) *Techniques and results.* Methods used in evaluating data must be described (ESSENTIAL). Any statistical adjustments such as for less than perfect reliability or for restriction of score range in the test or criterion, or both must be described and uncorrected coefficients must also be shown (ESSENTIAL). Statistical results must be summarized in graphical or tabular form (by ethnic and/or subgroup, if feasible) and statements regarding statistical significance of results must be made (ESSENTIAL). Where the statistical technique used categorizes continuous data (such as biserial correlation and phi coefficient) the cut-offs used and their bases must be described (ESSENTIAL). Where more than one predictor and/or more than one criterion is used, all predictor-criterion correlations must be reported regardless of magnitude or direction. Average scores (e.g. means) and measures of dispersion (e.g. standard deviations and ranges) for all test and criteria must be reported for all relevant subgroups, including minority and nonminority groups and males and females, where feasible (ESSENTIAL).

(10) *Uses and applications.* A description of the way in which the test is to be used (e.g., as a screening device with a cut-off score, combined with other tests in a battery) and application of the test (e.g., selection, transfer, upgrading) must be provided so as to permit judgments of the test's utility in making predictions of future work behavior (ESSENTIAL). Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined must be described (ESSENTIAL). (It is expected that each operational cut-off score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted.) The specific way the test or test battery is used operationally must be described and validity data must support this particular use (ESSENTIAL). If predictor weights are used, the weights and the validity of the weighted composite must be reported (ESSENTIAL).

(11) *Source data.* Each contractor must maintain, and make available upon request, records showing all pertinent information about individual sample members in studies involving the validation of tests. These data must include test scores, criterion scores, age, sex, minority group status, and experience on the specific job on which the validation study is being conducted and may

also inc[illegible] contractor chooses to submit along with a report on validation a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should NOT be shown. Submittal with the validation report is encouraged as it may prevent delays in approval in the event that errors are noted.

(12) *Contact person.* It would be desirable for the contractor to provide the name, address and telephone number of person currently working for the company or consulting firm who may be contacted for further information about the validation study.

(b) *Content validity.* Content validity is an appropriate type of validity to demonstrate for skills tests (that is, tests to determine whether an individual already possesses needed skills or knowledge), and certain other selection procedures, but it is not ordinarily an appropriate type of validity to fully support aptitude or intelligence tests (that is, tests to determine whether an individual can learn needed skills or knowledge). Also, content validity sometimes may be accepted as provisional compliance where criterion related is preferred but is not technically feasible. Frequently, the content validity of a selection procedure can be demonstrated to the satisfaction of the compliance officer by the contractor, either orally or in writing, without the need to prepare a formal report in accordance with these guidelines.

NOTE.—It is important to distinguish between face validity which involves an apparent but superficial correspondence between test content and the job (not an acceptable type of validity) and content validity, which involves a demonstration that the test content samples important elements of job tasks. Formal reports of the content validity of tests and other selection methods, where required by this chapter (i.e., disproportionate rejection rate and request of compliance officer), are to contain the following information:

(1) *Job analysis.* The essential foundation of a content validity study is a reliable and comprehensive job analysis. The analysis must define the duties performed by incumbents on the job, the level of difficulty at which the duties are performed, and those duties which are critical (i.e., those which must be performed competently if the job is to be performed in a satisfactory manner) (ESSENTIAL). The job analysis should describe on what bases duties were determined to be critical, such as the proportion of time spent on the respective duties, their levels of difficulty, their importance, their frequency of performance, and other relevant factors. If a duty which occupies a high proportion of time is not deemed critical, the reasons therefore must be set forth. (The level, breadth, degree and/or type of skills or knowledge to be learned on the job or in the job related training must be identified because selection standards must not require this level, breadth, degree and/or type of skills or knowledge.) Citation of actual occurrences of ineffective behavior resulting from the absence of a particular knowledge, skill or personal characteristic would be desirable.

(2) *Job title and code.* It is desirable that the job title used in company terminology plus the corresponding job title and code from United States Employment Service *Dictionary of Occupational Titles* (Third Edition) Volumes

[illegible] United States Government [illegible] be provided. Where appropriate DOT codes and titles do not exist, a notation to that effect should be made.

(3) *Predictors.* Privately constructed tests, specific training requirements, composites of test batteries and other predictors should be explicitly described (ESSENTIAL). Commercially available tests, if used, should be described by title, form and publisher (ESSENTIAL). (The predictor content must be restricted to measurement of the knowledge and skills identified in the job analysis.)

(4) *Techniques and results.* Describe the way in which the correspondence between the predictor content and the job content was established (ESSENTIAL). (This includes both content area and relative emphasis given to each area.) The validity demonstration must include a clear description of the depth and scope of primary characteristics required of the worker in performing these specific tasks. Specify the way in which these tasks, knowledge, skills and personal characteristics were determined and their relative importance. Describe qualifications of subject matter experts and/or job experts who reviewed predictor content and job requirements. If any steps were taken to reduce racial, cultural or sex bias in the predictor content, describe these steps. Explain how time limits were established and how these are related to speed with which tasks must be accomplished on the job. Describe studies, if any, to estimate the reliability of the predictors or, if relevant reliability studies have been described in the literature, these should be referenced.

(5) *Normative data.* As appropriate, it is desirable that average scores (e.g. means) and measures of dispersion (e.g. standard deviations and ranges) on the predictors be reported for one or more samples of applicants or other relevant samples. If feasible, these data should be reported separately for minority subgroups and separately for males and females.

(6) *Cut-off scores.* The rationale for minimum requirements, if any, must be provided (ESSENTIAL). (It is expected that each operational cut-off score or level of skill sought will be reasonable and consistent with normal expectations of proficiency within the work force.)

If the test is used to rank individuals who are above minimum levels, or if preference is given to individuals who score significantly above the minimum levels, a rationale for this procedure must be provided (ESSENTIAL).

(7) *Uses and applications.* A description of the way in which the test is to be used (e.g. as a screening device with a cut-off score, combined with other tests in a battery) and application of the test (e.g. selection, transfer, upgrading) must be provided (ESSENTIAL).

(8) *Contact person.* It would be desirable for the contractor to provide the name, mailing address and telephone number of person currently working for the company or consulting firm who may be contacted for further information about the validation study.

NOTE: Previously written company or consultant reports on criterion-related validity or content validity are acceptable if they are reasonably complete in regard to the above information. If the previously written reports are not complete, the additional information may be appended. If necessary information (all items except those identified as desirable) is not available, the report may still be submitted but approval will be limited to provisional compliance. Reports should not be submitted if any ESSENTIAL items are missing.

Effective date. This amendment shall become effective on January 17, 1974.

Signed at Washington, D.C., this 10th day of January 1974.

PETER J. BRENNAN,
Secretary of Labor.
BERNARD E. DELURY,
Assistant Secretary for Employment Standards.
PHILIP J. DAVIS,
Director, Office of Federal Contract Compliance.

FR Doc. 74-1491 Filed 1-16-74; 9:45 a.m.

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APPENDIX B

Guidelines on Employee Selection Procedures (EEOC)[1]

Title 29—LABOR

Chapter XIV—Equal Employment Opportunity Commission

PART 1607—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

BY VIRTUE of the authority vested in it by section 713 of title VII of the Civil Rights Act of 1964, 42 U.S.C., section 2000e–12, 78 Stat. 265, the Equal Employment Opportunity Commission hereby issues Title 29, Chapter XIV, § 1607 of the Code of Federal Regulations.

These Guidelines on Employee Selection Procedures supersede and enlarge upon the Guidelines on Employment Testing Procedures, issued by the Equal Employment Opportunity Commission on August 24, 1966. Because the material herein is interpretive in nature, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date are inapplicable. The Guidelines shall be applicable to charges and cases presently pending or hereafter filed with the Commission.

Sec.

1607.1 Statement of purpose.
1607.2 "Test" defined.
1607.3 Discrimination defined.
1607.4 Evidence of validity.
1607.5 Minimum standards for validation.
1607.6 Presentation of validity evidence.
1607.7 Use of other validity studies.
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1607.9 Continued use of tests.
1607.10 Employment agencies and employment services.
1607.11 Disparate treatment.
1607.12 Retesting.
1607.13 Other selection techniques.
1607.14 Affirmative action.

AUTHORITY: The provisions of this Part 1607 issued under Sec. 713, 78 Stat. 265, 42 U.S.C. sec. 2000e–12.

[1] From *Federal Register*, 1970, 35(149), 12333–12336.

Appendixes

§ 1607.1 Statement of purpose.

(a) The guidelines in this part are based on the belief that properly validated and standardized employee selection procedures can significantly contribute to the implementation of nondiscriminatory personnel policies, as required by title VII. It is also recognized that professionally developed tests, when used in conjunction with other tools of personnel assessment and complemented by sound programs of job design, may significantly aid in the development and maintenance of an efficient work force and, indeed, aid in the utilization and conservation of human resources generally.

(b) An examination of charges of discrimination filed with the Commission and an evaluation of the results of the Commission's compliance activities has revealed a decided increase in total test usage and a marked increase in doubtful testing practices which, based on our experience, tend to have discriminatory effects. In many cases, persons have come to rely almost exclusively on tests as the basis for making the decision to hire, transfer, promote, grant membership, train, refer or retain, with the result that candidates are selected or rejected on the basis of a single test score. Where tests are so used, minority candidates frequently experience disproportionately high rates of rejection by failing to attain score levels that have been established as minimum standards for qualification.

It has also become clear that in many instances persons are using tests as the basis for employment decisions without evidence that they are valid predictors of employee job performance. Where evidence in support of presumed relationships between test performance and job behavior is lacking, the possibility of discrimination in the application of test results must be recognized. A test lacking demonstrated validity (i.e., having no known significant relationship to job behavior) and yielding lower scores for classes protected by title VII may result in the rejection of many who have necessary qualifications for successful work performance.

(c) The guidelines in this part are designed to serve as a workable set of standards for employers, unions and employment agencies in determining whether their selection procedures conform with the obligations contained in title VII of the Civil Rights Act of 1964. Section 703 of title VII places an affirmative obligation upon employers, labor unions, and employment agencies, as defined in section 701 of the Act, not to discriminate because of race, color, religion, sex, or national origin. Subsection (h) of section 703 allows such persons "* * * to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin."

§ 1607.2 "Test" defined.

For the purpose of the guidelines in this part, the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The guidelines in this part apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted

to, measures of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical and other aptitudes; dexterity and coordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term "test" includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information blanks, interviewers' rating scales, scored application forms, etc.

§ 1607.3 Discrimination defined.

The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by title VII constitutes discrimination unless: (a) the test has been validated and evidences a high degree of utility as hereinafter described, and (b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use.

§ 1607.4 Evidence of validity.

(a) Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate § 1607.3. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

(b) The term "technically feasible" as used in these guidelines means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

(c) Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(1) If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to underscore the principle that attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that

persons employed will in fact attain that higher level job within a reasonable period of time.

(2) Where a test is to be used in different units of a multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected throughout a multiunit organization, evidence of validity specific to each unit may not be required: *Provided*, That no significant differences exist between units, jobs, and applicant populations.

§ 1607.5 Minimum standards for validation.

(a) For the purpose of satisfying the requirements of this part, empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals" published by American Psychological Association, 1200 17th Street NW., Washington, D.C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behaviors composing the job in question. The types of knowledge, skills or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job.

(b) Although any appropriate validation strategy may be used to develop such empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

(1) Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market. Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of his subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.

(2) Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores

[illegible] that tests do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of test results, that are privately developed and/or are not available through normal commercial channels must be included as a part of the validation evidence.

(3) The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Such criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses.

(4) In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisors' prejudice, as, when, as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.

(5) Differential validity. Data must be generated and results separately reported for minority and nonminority groups wherever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these guidelines pending separate validation of the test for the minority group in question. (See § 1607.9). A test which is differentially valid may be used in groups for which it is valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

(c) In assessing the utility of a test the following considerations will be applicable:

(1) The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

(2) In addition to statistical significance, the relationship between the test and criterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including:

(i) The larger the proportion of applicants who are hired for or placed on

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the job ... to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available;

(ii) The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory;

(iii) The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high.

§ 1607.6 Presentation of validity evidence.

The presentation of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. (See § 1607.5(c) concerning assessing utility of a test.) Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted.

§ 1607.7 Use of other validity studies.

In cases where the validity of a test cannot be determined pursuant to § 1607.4 and § 1607.5 (e.g., the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when: (a) The studies pertain to jobs which are comparable (i.e., have basically the same task elements), and (b) there are no major differences in contextual variables or sample composition which are likely to significantly affect validity. Any person citing evidence from other validity studies as evidence of test validity for his own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in paragraphs (a) and (b) of this section.

§ 1607.8 Assumption of validity.

(a) Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence

of validity. Specifically ruled out are: assumptions of validity based on test names or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes.

(b) Although professional supervision of testing activities may help greatly to insure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity.

§ 1607.9 Continued use of tests.

Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue: *Provided:* (a) The person can cite substantial evidence of validity as described in § 1607.7 (a) and (b); and (b) he has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained.

§1607.10 Employment agencies and employment services.

(a) An employment service, including private employment agencies, State employment agencies, and the U.S. Training and Employment Service, as defined in section 701(c), shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standard not validated in accordance with these guidelines.

(b) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in these guidelines. An employment service is not relieved of its obligation herein because the test user did not request such validation or has requested the use of some lesser standard than is provided in these guidelines.

(c) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the guidelines in this part, before it administers the testing program and/or makes referral pursuant to the test results. The employment agency must furnish on request such evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the test user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity (see § 1607.8(a)). An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in § 1607.7.

§ 1607.11 Disparate treatment.

The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard—

even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon any individual or class protected by title VII where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority or sex group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by title VII who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force.

§ 1607.12 Retesting.

Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration to earlier "failure" candidates who have availed themselves of more training or experience. In particular, if any applicant or employee during the course of an interview or other employment procedure claims more education or experience, that individual should be retested.

§ 1607.13 Other selection techniques.

Selection techniques other than tests, as defined in § 1607.2, may be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of his unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in §§ 1607.4 and 1607.5. Data suggesting the possibility of discrimination exist, for example, when there are differential rates of applicant rejection from various minority and nonminority or sex groups for the same job or group of jobs or when there are disproportionate representations of minority and nonminority or sex groups among present employees in different types of jobs. If the person is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination.

§ 1607.14 Affirmative action.

Nothing in these guidelines shall be interpreted as diminishing a person's obligation under both title VII and Executive Order 11246 as amended by Executive Order 11375 to undertake affirmative action to ensure that applicants or employees are treated without regard to race, color, religion, sex, or national origin. Specifically, the use of tests which have been validated pursuant to these guidelines does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by title VII.

The guidelines in this part are effective upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., 21st day of July 1970.

[SEAL] WILLIAM H. BROWN III,
Chairman.

[F.R. Doc. 70-9662; Filed, July 31, 1970; 8:48 A.M.]

APPENDIX C

Classified List of Diagnostic Tests

Title	Publisher	MMY (or date)
INTELLIGENCE TESTS AND DEVELOPMENTAL SCALES		
• Individual Tests		
AAMD Adaptive Behavior Scale, 1974	American Association on Mental Deficiency, 5201 Connecticut Avenue, N.W., Washington, D.C., 20015	7–37
Arthur Adaptation of the Leiter International Performance Scale	Stoelting	6–328
Arthur Point Scale of Performance Tests:		4–335
Form 1	Stoelting	
Form 2	Psychological Corporation	
Bayley Scales of Infant Development	Psychological Corporation	7–402
Cain-Levine Social Competency Scale	Consulting Psychologists Press	6–89
Cattell Infant Intelligence Scale	Psychological Corporation	6–515
Columbia Mental Maturity Scale	Harcourt Brace Jovanovich	(6–517) 1972
Concept Assessment Kit—Conservation	Educational and Industrial Testing Service	7–437
Full Range Picture Vocabulary Test	Psychological Test Specialists	6–321
Gesell Developmental Schedules	Psychological Corporation	6–322
Haptic Intelligence Scale for Adult Blind	Psychology Research, Box 14, Technology Center, Chicago, Ill. 60616	7–409
Hiskey-Nebraska Test of Learning Aptitude	Marshall S. Hiskey, 5640 Baldwin, Lincoln, Neb. 68506	7–410
Leiter International Performance Scale	Stoelting	5–408
Lincoln-Oseretsky Motor Development Scale	Stoelting	5–767
McCarthy Scales of Children's Abilities	Psychological Corporation	1972
Oseretsky Tests of Motor Proficiency	American Guidance Service	4–650
Peabody Picture Vocabulary Test	American Guidance Service	7–417
Pictorial Test of Intelligence	Houghton Mifflin	7–418
Porteus Maze Test	Psychological Corporation	7–419
Quick Test	Psychological Test Specialists	7–422
Stanford-Binet Intelligence Scale	Houghton Mifflin	(7–425) 1973
Vineland Social Maturity Scale	American Guidance Service	6–194
Wechsler Adult Intelligence Scale (WAIS)	Psychological Corporation	7–429
Wechsler Intelligence Scale for Children—Revised (WISC-R)	Psychological Corporation	(7–431) 1974

Title	Publisher	MMY (or date)
INTELLIGENCE TESTS AND DEVELOPMENTAL SCALES (Cont.)		
Weehsler Preschool and Primary Scale of Intelligence (WPPSI)	Psychological Corporation	7–434
• **Group Tests**		
ACT Battery of the American College Testing Program	American College Testing Program, P. O. Box 168, Iowa City, Iowa 52240	7–330
Alpha Examination, Modified Form 9	Psychological Corporation	3–220
Analysis of Learning Potential (ALP)	Harcourt Brace Jovanovich	7–334
California Test of Mental Maturity, 1963 Revision	CTB/McGraw-Hill	7–338
Cognitive Abilities Test	Houghton Mifflin	(7–343) 1971–1974
College Board Scholastic Aptitude Test (SAT)	Educational Testing Service (for the College Entrance Examination Board)	7–344
College Qualification Tests	Psychological Corporation	7–345
Concept Mastery Test	Psychological Corporation	(6–451) 1973
Culture Fair Intelligence Test	Institute of Personality and Ability Testing	6–453
D-48 Test	Consulting Psychologists Press	6–454
Goodenough-Harris Drawing Test	Harcourt Brace Jovanovich	7–352
Graduate Record Examinations (GRE)	Educational Testing Service (for the Graduate Record Board)	7–353; 7–087
Henmon-Nelson Tests of Mental Ability, 1973 Revision	Houghton Mifflin	(6–402) 1973
Kuhlmann-Anderson Tests: A Measure of Academic Potential	Personnel Press	6–400
Miller Analogies Test	Psychological Corporation	7–383
Otis-Lennon Mental Ability Test	Harcourt Brace Jovanovich	7–370
Progressive Matrices	H. K. Lewis & Co. Ltd. (U.S. distributor: Psychological Corporation)	7–370
Revised Beta Examination	Psychological Corporation	6–491
School and College Ability Tests (SCAT) — Series II	Educational Testing Service (Cooperative Tests and Services)	(7–347) 1973
SRA Pictorial Reasoning Test	Science Research Associates	7–381
SRA Short Test of Educational Ability (STEA)	Science Research Associates	7–382
Tests of General Ability (TOGA)	Science Research Associates	6–490

Title	Publisher	MMY (or date)
MULTIPLE APTITUDE BATTERIES		
Academic Promise Tests (APT)	Psychological Corporation	7–072
ACT Career Planning Profile (CPP)	American College Testing Program, P. O. Box 168, Iowa City, Iowa 52240	1971
Differential Aptitude Tests (DAT)	Psychological Corporation	(7–073) 1974
Flanagan Aptitude Classification Tests (FACT)	Science Research Associates	7–075
Flanagan Industrial Tests (FIT)	Science Research Associates	7–077
General Aptitude Test Battery (GATB)	U.S. Employment Service	7–078
Guilford-Zimmerman Aptitude Survey	Sheridan Psychological Services	6–772
Nonreading Aptitude Test Battery, 1969 Edition (NATB)	U.S. Employment Service	7–079
Southern California Tests of Intellectual Abilities (Structure-of-Intellect tests from Aptitudes Research Project, Guilford et al.)	Sheridan Psychological Services	*
SRA Primary Mental Abilities, 1962 Edition	Science Research Associates	7–080
TESTS OF CREATIVITY AND REASONING		
Creativity Tests for Children (from Aptitudes Research Project, Guilford et al.)	Sheridan Psychological Services	1974
Logical Reasoning	Sheridan Psychological Services	5–094
Pertinent Questions	Sheridan Psychological Services	6–537
Remote Associates Test	Houghton Mifflin	7–445
Ship Destination Test	Sheridan Psychological Services	6–500
Southern California Tests of Fluency, Flexibility, and Elaboration (from Aptitudes Research Project, Guilford et al.)	Sheridan Psychological Services	*
Torrance Tests of Creative Thinking	Personnel Press	7–448
Watson-Glaser Critical Thinking Appraisal	Harcourt Brace Jovanovich	7–083
EDUCATIONAL TESTS		
• **General Achievement Batteries**		
Adult Basic Learning Examination (ABLE)	Harcourt Brace Jovanovich	7–3

* A few reviewed in MMY under individual titles.

Title	Publisher	Main (or date)
EDUCATIONAL TESTS (Cont.)		
Basic Occupational Literacy Test (BOLT)	U.S. Employment Service	1973
California Achievement Tests, 1970 Edition	CTB/McGraw-Hill	7–5
Cooperative Primary Tests	Educational Testing Service (Cooperative Tests and Services)	7–10
Iowa Tests of Basic Skills	Houghton Mifflin	(6–13) 1974
Iowa Tests of Educational Development	Science Research Associates	(6–14) 1972
Fundamental Achievement Series	Psychological Corporation	7–978
McGraw-Hill Basic Skills System	McGraw-Hill Book Co., Inc., 1221 Avenue of the Americas, New York, N.Y. 10020	7–214, 230, 230, 477, 704, 781
Metropolitan Achievement Test	Harcourt Brace Jovanovich	7–14
Peabody Individual Achievement Test	American Guidance Service	7–17
Sequential Tests of Educational Progress (STEP)—Series II	Educational Testing Service (Cooperative Tests and Services)	(6–25) 1971
SRA Achievement Series	Science Research Associates	(7–18) 1971
SRA Reading and Arithmetic Indexes	Science Research Associates	7–20
Stanford Achievement Test	Harcourt Brace Jovanovich	(7–25) 1973
Stanford Test of Academic Skills (TASK)	Harcourt Brace Jovanovich	1973
Tests of Academic Progress (TAP)	Houghton Mifflin	(7–31) 1974
Wide Range Achievement Test, Revised Edition	Guidance Associates of Delaware, 1526 Gilpin Avenue, Wilmington, Delaware 19806	7–36
• **ACHIEVEMENT TESTS IN SEPARATE SUBJECTS**		
Blyth Second-Year Algebra Test, Revised Edition	Harcourt Brace Jovanovich	7–497
Contemporary Mathematics Tests	CTB/McGraw-Hill	7–464
Content Evaluation Series:	Houghton Mifflin	
Language Arts Tests		7–198
Mathematics Test		7–475
Science Tests		7–790
Cooperative Mathematics Tests	Educational Testing Service (Cooperative Tests and Services)	7–485

Title	Publisher	Main (or date)
EDUCATIONAL TESTS (Cont.)		
Cooperative Science Tests	Educational Testing Service (Cooperative Tests and Services)	7–787
MLA Cooperative Foreign Language Tests	Educational Testing Service (Cooperative Tests and Services)	7–254
Nelson Biology Test, Revised Edition	Harcourt Brace Jovanovich	7–819
Pimsleur Modern Foreign Language Proficiency Tests: French, German, Spanish	Harcourt Brace Jovanovich	7–257
Stanford Modern Mathematics Concepts Test	Harcourt Brace Jovanovich	7–490
• **DIAGNOSTIC AND CRITERION-REFERENCED TESTS**		
Buswell-John Diagnostic Test for Fundamental Processes in Arithmetic	Bobbs-Merrill	4–413
Diagnosis: An Instructional Aid Series—	Science Research Associates	
Mathematics		1972–73
Reading		1973–74
Diagnostic Reading Scales, Revised Edition	CTB/McGraw-Hill	(7–717) 1972
Diagnostic Reading Tests	Committee on Diagnostic Reading Tests, Inc., Mountain Home, N.C. 28758	8–823
Durrell Analysis of Reading Difficulty: New Edition	Harcourt Brace Jovanovich	3–080
Durrell Listening-Reading Series	Harcourt Brace Jovanovich	7–728
Gates-McKillop Reading Diagnostic Tests	Teachers College Press, 502 West 121st Street, New York, N.Y. 10027	8–824
Gilmore Oral Reading Test	Harcourt Brace Jovanovich	7–737
Gray Oral Reading Test	Bobbs-Merrill	6–842
Individual Pupil Monitoring System:	Houghton Mifflin	
Mathematics		1973
Reading		1974
Interim Evaluation Tests:	CTB/McGraw-Hill	
PMI		1973
PRI		1974
Iowa Silent Reading Tests	Harcourt Brace Jovanovich	(6–794) 1973
Nelson-Denny Reading Test	Houghton Mifflin	(6–800) 1973

Title	Publisher	MMY (or date)
EDUCATIONAL TESTS (Cont.)		
Prescriptive Mathematics Inventory	CTB/McGraw-Hill	1972
Prescriptive Reading Inventory	CTB/McGraw-Hill	1972
Skills Monitoring System:	Harcourt Brace Jovanovich	
Reading		1975–76
Study Skills		1976
Stanford Diagnostic Arithmetic Test	Harcourt Brace Jovanovich	(7–528) 1973
Stanford Diagnostic Reading Test	Harcourt Brace Jovanovich	(7–725) 1973
• **Prognostic Tests**		
Modern Language Aptitude Test Elementary Form	Psychological Corporation	6–357 7–255
Orleans-Hanna Algebra Prognosis Test	Harcourt Brace Jovanovich	7–510
Orleans-Hanna Geometry Prognosis Test	Harcourt Brace Jovanovich	7–539
Pimsleur Language Aptitude Battery	Harcourt Brace Jovanovich	7–250
• **Tests for Early Childhood Education**		
Analysis of Readiness Skills: Reading and Mathematics	Houghton Mifflin	1972
Boehm Test of Basic Concepts	Psychological Corporation	7–335
Chaos: An Assessment Program for Preprimary Children	Educational Testing Service	1974
Cooperative Preschool Inventory — Revised Edition	Educational Testing Service (Cooperative Tests and Services)	7–404
Covell Developmental Tests	Programs for Education, Box 85, Lumberville, Pa. 18933	7–750
Lee-Clark Reading Readiness Test	CTB/McGraw-Hill	7–752
Let's Look at Children	Educational Testing Service (Cooperative Tests and Services)	1973
Metropolitan Readiness Tests	Harcourt Brace Jovanovich	(7–752) 1976
Primary Reading Profiles, (Revised Edition)	Houghton Mifflin	3–005
Stanford Early School Achievement Test (SESAT)	Harcourt Brace Jovanovich	7–28
Tests of Basic Experiences (TOBE)	CTB/McGraw-Hill	7–33

Title	Publisher	MMY (or date)
OCCUPATIONAL TESTS		
• **Screening Tests**		
Otis Self-Administering Tests of Mental Ability	Harcourt Brace Jovanovich	5–301
Personnel Tests for Industry	Psychological Corporation	7–371
Wesman Personnel Classification Test	Psychological Corporation	7–400
Wonderlic Personnel Test	E. F. Wonderlic & Associates, P. O. Box 7, Northfield, Ill. 60093	7–401
• **Sensory Tests**		
AO Sight Screener	American Optical Company, Southbridge, Mass. 01550	5–770
Dvorine Color Vision Test	Harcourt Brace Jovanovich	6–955
Keystone Telebinocular	Keystone View Company, Meadville, Pa. 16335	5–780
Massachusetts Hearing Test*	Massachusetts Department of Public Health, Division of Maternal and Child Health Services, 88 Broad Street, Boston, Mass. 02110	6–949
Ortho-Rater	Bausch & Lomb, Inc., Rochester, N.Y. 14602	5–781
School Vision Tester*	Bausch & Lomb, Inc., Rochester, N.Y. 14602	7–875
• **Motor Tests**		
Crawford Small Parts Dexterity Test	Psychological Corporation	5–871
Purdue Pegboard	Science Research Associates	6–1081
Stromberg Dexterity Test	Psychological Corporation	4–755
• **Mechanical Aptitude Tests**		
Bennett Mechanical Comprehension Test	Psychological Corporation	7–1049
MacQuarrie Test for Mechanical Ability	CTB/McGraw-Hill	4–779
Revised Minnesota Paper Form Board Test	Psychological Corporation	7–1050
SRA Mechanical Aptitudes	Science Research Associates	4–791
• **Clerical Tests**		
Appraisal of Occupational Aptitudes	Houghton Mifflin	1971

* This test is designed for use with schoolchildren. It is listed here since this is the only section containing sensory tests.

Title	Publisher	MMY (or date)
OCCUPATIONAL TESTS (Cont.)		
General Clerical Test	Psychological Corporation	(4-720) 1972
Minnesota Clerical Test	Psychological Corporation	6-1040
Seashore-Bennett Stenographic Proficiency Test	Psychological Corporation	3-519
Short Employment Tests	Psychological Corporation	6-1045
Short Tests of Clerical Ability	Science Research Associates	6-1046
SRA Clerical Aptitudes	Science Research Associates	4-732
SRA Typing Skills (Forms A, B, C)	Science Research Associates	1975
Typing Tests for Business	Psychological Corporation	7-1007
• ARTISTIC APTITUDE TESTS		
Graves Design Judgment Test	Psychological Corporation	4-220
Horn Art Aptitude Inventory	Stoelting	3-242
Meier Art Tests: 1. Art Judgment 2. Aesthetic Perception	Bureau of Educational Research and Service	7-240
• MUSICAL APTITUDE TESTS		
Musical Aptitude Profile	Houghton Mifflin	7-249
Seashore Measures of Musical Talents	Psychological Corporation	6-353
Wing Standardized Tests of Musical Intelligence	NFER Publishing Co. Ltd., 2 Jennings Bldgs., Thames Avenue, Windsor, Berks. SL4 1QS, England	6-354
• TESTS IN THE PROFESSIONS		
Dental Admission Testing Program	Division of Educational Measurements, Council on Dental Education, American Dental Association, 211 East Chicago Avenue, Chicago, Ill. 60611	7-1091
Law School Admission Test (LSAT)	Educational Testing Service	7-1098
Medical College Admission Test (MCAT)	Association of American Medical Colleges, One Dupont Circle, N.W., Washington, D.C. 20030	7-1100
Minnesota Engineering Analogies Test (MEAT)	Psychological Corporation	7-1095
National Teacher Examinations	Educational Testing Service	7-582
NLN Achievement Tests in Nursing	National League for Nursing, Inc., 10 Columbus Circle, New York, N.Y. 10019	7-1118, 7-1120

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Title	Publisher	MMY (or date)
CLINICAL TESTS FOR COGNITIVE DYSFUNCTION AND LEARNING DISABILITIES		
Auditory Discrimination Test (1973 Revision)	Western Psychological Services	(6-940) 1974
Bender-Gestalt Test	American Orthopsychiatric Association, Inc., 1790 Broadway, New York, N.Y. 10019	7-101
Concept Formation Test (Kasanin & Hanfmann)	Stoelting	6-78
Examining for Aphasia (Second Edition)	Psychological Corporation	3-52
Frostig Developmental Test of Visual Perception, Third Edition	Consulting Psychologists Press	7-871
Frostig Movement Skills Test Battery (Experimental Edition)	Consulting Psychologists Press	1973
Goldman-Fristoe-Woodcock Test of Auditory Discrimination	American Guidance Service	7-938
Goldstein-Scheerer Tests of Abstract and Concrete Thinking	Psychological Corporation	6-101
Illinois Test of Psycholinguistic Abilities, Revised Edition	University of Illinois Press, Urbana, Ill. 61801	7-442
Language Modalities Test for Aphasia	Industrial Relations Center, University of Chicago	7-950
Memory-for-Designs Test (Graham & Kendall)	Psychological Test Specialists	7-101
Minnesota Test for Differential Diagnosis of Aphasia	University of Minnesota Press, 2037 University Avenue, S.E., Minneapolis, Minn. 55455	7-958
Porch Index of Communicative Ability in Children	Consulting Psychologists Press	1974
Primary Visual Motor Test	Grune & Stratton, 757 Third Avenue, New York, N.Y. 10017	7-873
A Psychoeducational Inventory of Basic Learning Abilities	Fearon Publishers, 6 Davis Drive, Belmont, Calif. 94002	1968
The Pupil Rating Scale: Screening for Learning Disabilities	Grune & Stratton, 757 Third Avenue, New York, N.Y. 10017	1971
Revised Visual Retention Test (Benton)	Psychological Corporation	(6-543) 1974
Screening Tests for Identifying Children with Specific Language Disability, Revised Edition	Educators Publishing Service, Inc., 75 Moulton Street, Cambridge, Mass. 02138	7-909

Title	Publisher	MMY (or date)
CLINICAL TESTS FOR COGNITIVE DYSFUNCTION AND LEARNING DISABILITIES (Cont.)		
Southern California Sensory Integration Tests	Western Psychological Services	(6-83; 7-870 to 879) 1972
SELF-REPORT PERSONALITY INVENTORIES		
California Psychological Inventory (CPI)	Consulting Psychologists Press	7-40
Children's Personality Questionnaire	Institute for Personality and Ability Testing	(6-122) 1972
Clinical Analysis Questionnaire, Research Edition	Institute for Personality and Ability Testing	7-54
Comrey Personality Scales	Educational and Industrial Testing Service	7-59
Early School Personality Questionnaire	Institute for Personality and Ability Testing	7-71
Edwards Personal Preference Schedule (EPPS)	Psychological Corporation	7-72
Eysenck Personality Inventory	Educational and Industrial Testing Service	7-76
Gordon Personal Inventory	Harcourt Brace Jovanovich	6-102
Gordon Personal Profile	Harcourt Brace Jovanovich	6-103
Guilford-Zimmerman Temperament Survey	Sheridan Psychological Services	6-110
Jr.-Sr. High School Personality Questionnaire	Institute for Personality and Ability Testing	7-97
Minnesota Counseling Inventory	Psychological Corporation	6-142
Minnesota Multiphasic Personality Inventory (MMPI)	Psychological Corporation	7-104
Mooney Problem Check List	Psychological Corporation	6-145
Myers-Briggs Type Indicator	Consulting Psychologists Press	6-147
Personality Research Form	Research Psychologists Press, 19 Greenwich Avenue, Goshen, N.Y. 10924	7-123
Psychological Screening Inventory	Research Psychologists Press, 19 Greenwich Avenue, Goshen, N.Y. 10924	1973
Sixteen Personality Factor Questionnaire (16 PF)	Institute for Personality and Ability Testing	7-139
State-Trait Anxiety Inventory (STAI)	Consulting Psychologists Press	7-141
State-Trait Anxiety Inventory for Children (STAIC)	Consulting Psychologists Press	1973
SIS Junior Inventory	Scholastic Testing Service	(5-104) 1968
SIS Youth Inventory	Scholastic Testing Service	(6-170) 1971

Title	Publisher	MMY (or date)
SELF-REPORT PERSONALITY INVENTORIES (Cont.)		
Thorndike Dimensions of Temperament	Psychological Corporation	7-154
TESTS OF INTERESTS, ATTITUDES, AND VALUES		
California Occupational Preference Survey	Educational and Industrial Testing Service	7-1012
Career Maturity Inventory	CTB/McGraw-Hill	1973
Environmental Response Inventory (ERI)	Consulting Psychologists Press	1974
Gordon Occupational Check List	Harcourt Brace Jovanovich	7-1019
Guilford-Zimmerman Interest Inventory	Sheridan Psychological Services	6-1057
Hall Occupational Orientation Inventory	Scholastic Testing Service	(7-1021) 1971
Kuder General Interest Survey	Science Research Associates	7-1024
Kuder Occupational Interest Survey	Science Research Associates	7-1025
Kuder Personal Preference Record	Science Research Associates	6-132
Kuder Vocational Preference Record	Science Research Associates	6-1003
Minnesota Teacher Attitude Inventory	Psychological Corporation	6-099
Minnesota Vocational Interest Inventory (MVII)	Psychological Corporation	7-1026
Ohio Vocational Interest Survey (OVIS)	Harcourt Brace Jovanovich	7-1029
Personal Orientation Inventory	Educational and Industrial Testing Service	7-121
Pictorial Study of Values	Psychometric Affiliates	5-90
Self-Directed Search (SDS)	Consulting Psychologists Press	1971
Strong-Campbell Interest Inventory (SCII), 1974 edition of Strong Vocational Interest Blank (SVIB)	Stanford University Press, Stanford, Calif. 94305	(7-1030, 1037) 1974
Study of Values	Houghton Mifflin	7-140
Survey of Interpersonal Values	Science Research Associates	6-181
Survey of Personal Values	Science Research Associates	7-149
Survey of School Attitudes	Harcourt Brace Jovanovich	1973
Vocational Preference Inventory, Sixth Revision	Consulting Psychologists Press	7-157
Work Environment Preference Schedule	Psychological Corporation	1973
Work Values Inventory	Houghton Mifflin	7-1042
PROJECTIVE TECHNIQUES		
Animal Crackers: A Test of Motivation to Achieve	CTB/McGraw-Hill	1975

Title	Publisher	MMY (or date)
PROJECTIVE TECHNIQUES (Cont.)		
Blacky Pictures	Psychodynamic Instruments, P. O. Box 1221, Ann Arbor, Mich. 48106	6–204
Children's Apperception Test (CAT)	CPS Inc., P. O. Box 83, Larchmont, N.Y. 10538	(6–206) 1971
Gerontological Apperception Test	Behavioral Publications, Inc., 2852 Broadway, New York, N.Y. 10025	1971
Holtzman Inkblot Technique	Psychological Corporation	7–109
H-T-P: House-Tree-Person Projective Technique	Western Psychological Services	6–215
Kent-Rosanoff Free Association Test	Stoelting	6–220
Machover Draw-a-Person Test	Charles C Thomas, 327 East Lawrence Avenue, Springfield, Ill. 02703	6–229 (see also 7–105)
Make a Picture Story (MAPS)	Psychological Corporation	6–230
Piotrowski's Automated Rorschach (PAR)	Hay Associates, 1845 Walnut Street, Philadelphia, Pa. 19103	1974
Rorschach	Grune & Stratton, Inc., 757 Third Avenue, New York, N.Y. 10017 (U.S. distributor)	7–175
Rosenzweig Picture-Frustration Study (P-F Study)	Saul Rosenzweig, 8029 Washington Street, St. Louis, Mo. 63114	6–238
Rotter Incomplete Sentences Blank	Psychological Corporation	6–239
Senior Apperception Technique	CPS Inc., P. O. Box 83, Larchmont, N.Y. 10538	1973
Szondi Test	Grune & Stratton, Inc., 757 Third Avenue, New York, N.Y. 10017 (U.S. distributor)	6–243
Thematic Apperception Test (TAT)	Harvard University Press, 79 Garden Street, Cambridge, Mass. 02138	7–181
PERSONALITY TESTS: MISCELLANEOUS		
Adjective Check List (ACL)	Consulting Psychologists Press	7–38
Barron-Welsh Art Scale	Consulting Psychologists Press	7–41
Chapin Social Insight Test	Consulting Psychologists Press	7–51
Closure Flexibility (Concealed Figures)	Industrial Relations Center, University of Chicago	7–435
Closure Speed (Gestalt Completion)	Industrial Relations Center, University of Chicago	7–436
Embedded Figures Test	Consulting Psychologists Press	(6–89) 1973

Title	Publisher	MMY (or date)
PERSONALITY TESTS: MISCELLANEOUS (Cont.)		
Famous Sayings	Psychological Test Specialists	6–96
Fear Survey Schedule	Educational and Industrial Testing Service	7–80
IPAT Humor Test of Personality	Institute for Personality and Ability Testing	(4–61) 1960
MEASURES OF ENVIRONMENT		
American Home Scale	Psychometric Affiliates	5–300
College and University Environment Scales, Second Edition (CUES)	Educational Testing Service	7–50
The Inventory of College Activities	American Council on Education, One Dupont Circle, Washington, D.C. 20036	7–93
Social Climate Scales	Consulting Psychologists Press	1974
Stern Activities Index	National Computer Systems, 4401 West 70th Street, Minneapolis, Minn. 55435	7–142
Stern Environment Indexes (College Environment Index & others)	National Computer Systems, 4401 West 70th Street, Minneapolis, Minn. 55435	7–143

APPENDIX D

Kanawha County School System

The following is a list of tests that I use most frequently with low-incidence children. Only those tests most applicable are used with each individual.

I. Tests for the Hearing Impaired

Intellectual Assessment

Weschler Intelligence Scale for Children - Revised (WISC-R)
Performance Scale (Verbal Scale if applicable)
Ages 6-16

Stanford Binet
Ages 2- dult
Used mainly with children below 6 years of age

Weschler Pre-School and Primary Scale of Intelligence (WPPSI)
Ages 4-6 1/2
Performance Scale (Verbal if applicable)
Useful with bright children

Merrill Palmer Scale of Mental Tests
Ages 18-71 months
This test is useful if dissatisfied with a child's responses on the Binet because it is heavily loaded with motor tasks.

Leiter
Ages 2-18
Useful with children whose intellectual potential is well below average.

Hiskey-Nebraska Test of Learning Aptitude
Ages 4-10
Norms are available for normal and hearing impaired populations.
Useful with the WISC-R for assessment of conceptual development.

Language Development

Boehm Test of Basic Concepts

Peabody Picture Vocabulary Test - measures receptive vocabulary

Achievement

Stanford Achievement Test
Special directions and norms for deaf

Key Math Diagnostic Arithmetic Test
This test shows areas where weaknesses occur but often these areas are those that are heavily dependent upon language related concepts. Useful information is gained in areas where a child has well-developed skills. Also useful in determining the amount of mainstreaming possible.

Peabody Individual Achievement Test (PIAT)
The general information section is useful

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II. Tests for the Physically Handicapped

Intellectual Assessment

Stanford Binet
Ages 2-Adult

Weschler Intelligence Scale for Children - Revised (WISC-R)
Ages 6-16
May need to prorate or use just the Verbal Scale

Weschler Pre-School and Primary Scale of Intelligence (WPPSI)
Ages 4 - 6 1/2
Verbal Scale is sometimes useful

The Columbia Test of Mental Maturity
Ages 3-6 to 9-11
Requires no verbal response, only pointing or nodding of head

The Merrill Palmer Scale of Mental Tests
Ages 18-71 months
Sometimes useful in conjunction with the Binet
Although heavily loaded with motor tests, there are allowances made for items refused or omitted.

Achievement

Kay Math Diagnostic Arithmetic Test

Woodcock Reading Mastery Test

Peabody Individual Achievement Test (PIAT)

There are several checklists which are useful in assessing a young child's abilities. A progress chart may be made to determine what skills a child has acquired. Some of these checklists are:

The Learning Acquisition Profile (LAP)
Ages 0-6
Assesses fine and gross motor, cognitive, language, social and self-help skills

The Marshall Town Project
Ages 0-3 years
Assesses social, language, and motor skills
Suggests activities to help children learn these skills.

Specific Areas of Deficits

Peabody Picture Vocabulary Test

Boehm Test of Basic Concepts

Bender Gestalt Test

Berry Test of Visual Motor Integration

III. Tests for the Visually Impaired

Intellectual Assessment

Weschler Intelligence Scale for Children - Revised (WISC-R)
Ages 6-16
Verbal Scale, Performance Scale is applicable

Interim Hayes-Binet Intelligence Tests for the Blind
Ages 3-Adult
Based on the Stanford Binet for use with blind and partially-sighted children

Weschler Pre-School and Primary Scale of Intelligence (WPPSI)
Ages - 4-6 1/2
Verbal Scale, Performance Scale if applicable

Achievement

Stanford Achievement Test
Special directions and norms for visually impaired

With partially-sighted may use:

Key Math Diagnostic Arithmetic Test
Woodcock Reading Mastery Test
Peabody Individual Achievement Test (PIAT)

Specific Areas of Deficits

The Berry Test of Visual Motor Integration

The Bender Gestalt Test

The Boehm Test of Basic Concepts

[illegible] L. Burns, Psychologist

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D. Insure that each evaluation report is signed by the evaluator and made available to the Special Education Placement Advisory Committee.

300.200 Provide staff who are appropriately trained and adequate in number to administer the necessary evaluations.

A. Insure that all evaluations are administered by certified, licensed, or appropriately qualified personnel.

B. Insure that individual psychological tests (such as Stanford Binet, Wechsler Intelligence Scale for Children, Wechsler Intelligence Scale for Children - Revised, Wechsler Adult Intelligence Scale, Wechsler Preschool and Primary Scale of Intelligence, Leiter International Performance Scale, Hiskey-Nebraska Test of Learning Aptitude) and projective techniques (such as Rorschach, Thematic Apperception Test, Children's Apperception Test, etc.) are administered by certified school psychologists, licensed psychologists under contractual arrangements, or school psychology graduate students under the supervision of certified school psychologists. Direct supervision must be documented by the supervisor's signature on the written report.

C. Insure that staff conducting evaluations are trained in the use of the specific evaluative instruments or techniques for which they are responsible, and who are knowledgeable in the area of concern or the suspected area of exceptionality.

D. Insure that staff are provided and participate in ongoing training in:

1. evaluation procedures, techniques, and instruments;

2. the State Standards for the Education of Exceptional Children;

3. procedural safeguards, including State and federal due process, protection in evaluation, and confidentiality requirements; and

4. the reporting procedures to be used.

300.500 Implement procedural safeguards to insure that the rights of the individual and parent(s) are protected in the evaluation procedures.

A. Provide written notification to the individual's parent(s)

of the screening results, as specified in Appendix A, and obtain written parental consent or implement the due process procedures for accomplishing this, as specified in Appendix A, prior to evaluation.

B. Utilize evaluation procedures that assure each individual protection in the selection, administration, and interpretation of evaluation procedures and instruments.

1. Administer evaluations in the individual's native language or other mode of communication, unless clearly not feasible to do so.

2. Insure that formal evaluation instruments/procedures are utilized for the specific purpose for which they have been validated.

3. Insure that evaluation instruments/procedures are administered by trained personnel in conformance with the instructions provided by their producer.

4. Insure that evaluation instruments/procedures include those designed to assess specific areas of educational need, i.e., are appropriate to comprehensively measure the individual's abilities and/or impairments, not merely those which are designed to provide a single general intelligence quotient.

5. Insure that evaluation results accurately reflect the individual's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the individual's impaired abilities (except where those skills are the factors the test purports to measure).

6. Select no individual for services solely on the basis of one test or type of test or other single means of evaluation.

C. Implement record collection, maintenance, and disclosure procedures that protect the confidentiality of all personally identifiable information, as specified in Appendix B.

300.400 Establish written timelines for providing evaluation activities that insure the consistent and expedient delivery of these services.

Special Provisions for Handicapped Individuals

There are a variety of special provisions for persons whose disabilities are severe enough that standard procedures becoffie obstacles to Federal employment. Selective placement coordinators and rehabilitation counselors should be knowledgable about each option described in this chapter. The purpose of special provisions is to permit handicapped individuals to demonstrate their qualifications. Goals are accurate evaluation of abilities, full and fair consideration of the applicant, and effective use of available talent.

Special Testing

An agency may not make use of any test or other selection criterion that screens out or tends to screen out handicapped individuals, unless the test is job-related for the position in question and there is no alternative. Agencies are required to select and administer tests so as to insure that the scores of applicants or employees who have disabilities that impair sensory, manual, or speaking skills accurately reflect the ability of the applicant to do the job in question rather than disabilities of the applicant.

For many years competitive examining procedures have included special provisions for testing handicapped individuals. Arrangements can be made through Office of Personnel Management area offices. In summary, the following accommodations are available:

For blind or visually impaired persons—Individual testing; braille, large-print, and tape-recorded tests; use of abacus for mathematical computations; examiners available to read directions and questions and mark answer sheets; modified version of the Professional and Administrative Career Examination (PACE) and recorded test announcements and sample questions for the PACE.

For deaf or hearing impaired persons—Individual testing; sign language interpreter available to explain test procedures and directions for taking tests; waiver of verbal portions of some tests; modified version of the PACE.

For persons with poor dexterity or coordination—Individual testing; extension of time limits; answer sheets with enlarged marking blocks; examiners available to turn pages and mark answer sheets.

Many handicapped individuals, even those with severe disabilities, do not need special testing. As a rule, blind persons and deaf persons do. Others for whom special arrangements often are made include persons

with neurological disorders such as cerebral palsy or multiple sclerosis, persons whose arms or hands are paralyzed or spastic, persons with brain damage, and persons with learning disabilities such as dyslexia.

A number of agencies within the Federal executive branch are excepted by law from the Office of Personnel Management's personnel regulations and procedures (e.g., the Central Intelligence Agency, Defense Intelligence Agency, and U.S. Postal Service). However, as part of affirmative action these agencies should ensure that their examining procedures are modified when necessary to accommodate the special needs of handicapped individuals.

Temporary Trial Appointments [12, 22]

A handicapped individual may profit from an opportunity to show what he or she can do. A temporary trial appointment is one way of overcoming an employer's fear that a person with disabilities will not be able to perform well or will not be accepted by co-workers. Physically handicapped and mentally restored persons can be employed under various temporary trial appointments, the most popular of which lasts 700 hours (approximately four months). There is no grade restriction, and it is not necessary for the agency to set up a special temporary position to use this provision. At the outset the agency makes no commitment for permanent employment, but later on appointment may be made to a continuing position.

Eligibility for a temporary trial appointment can be determined in one of two ways:

(1) For physically handicapped persons, the agency may accept a certification from a State vocational rehabilitation agency or the Veterans Administration. No employment test is required.

(2) For physically handicapped or mentally restored persons, the agency may apply the usual qualification standards for the position concerned, including administration of appropriate tests.

As soon as the appointee has demonstrated ability to do the job, the temporary trial appointment may be converted to a continuing appointment: competitive if the person is mentally restored; competitive or excepted if the person is physically handicapped.

Excepted Appointments [12, 22]

For handicapped individuals appointments in the excepted service differ from those in the competitive service in that the specific position is "excepted" or removed from the competitive system. This means that an individual's abilities are considered in regard to the tasks of a specific job, not an entire class of positions. In other words, he or she is not in competition with applicants who have established eligibility not only for the position in question but also for similar jobs in the same occupational series.

WEST VIRGINIA REHABILITATION CENTER
Institute, West Virginia

The following are lists of tests used with handicapped persons, with special emphasis on the deaf and the blind.

TESTS FOR THE DEAF

1. Intellectual Assessment

Wechsler Adult Intelligence Scale-Performance Scale
I find that even the partially hearing do poorly on the verbal scale due to their early sensory deprivation.

Wechsler-Bellevue Scale Form II - Performance Scale

Hiskey Nebraska Test of Learning Aptitude
This is a performance test which is standardized on deaf children up to about age 16.

Peabody Picture Vocabulary Test

This can be used with a written or signed presentation of the words.

2. Personality Evaluation

Drawing the Human Figure
This is a projective test that can be given to the deaf by written instructions or by signing. Associations to the test can be obtained by written questions or by signing.

Rotter Incomplete Sentences Blank-Adult Form
If the client is literate they can respond to this. A number of deaf clients seem to resent this test a great deal.

Self Description
A list of items to which a literate deaf person can respond to as true or false.

Item Check List
A list of key items from the MMPI which the deaf that are literate can respond to.

3. Social Maturity

The Revised Vineland Social Maturity Scale
This might be given to the deaf person by sign language. I have never tried this myself.

4. Occupational Interests

Wide Range Interest and Opinion Test
This is a picture inventory which the deaf can respond to with a minimum of reading ability.

3. Achievement

Peabody Individual Achievement Test
This test has norms through the twelfth grade. Answers are picked by choosing one of four choices on most items that are presented on an easel type of arrangement with flip cards. Instructions can be ready by the client or signed to him. He can respond by pointing or signing one, two, three or four. This test includes reading comprehension and general information in addition to the usual achievement areas. This test is easy for the deaf to comprehend and respond to.

4. Brain Damage

Graham-Kendall Memory-for-Designs Test
The deaf can read the instructions from the manual or be given instructions by signing. They then reproduce the designs after they have been taken away.

Tien's Organic Integrity Test
The deaf can organize these cards into pairs which they consider to be the most alike.

Tests for the Partially Hearing

Testing for the partially hearing is pretty much the same as for the totally deaf except some more verbal activities can be attempted such as the verbal subtests on the Wechsler Adult Intelligence Scale or the Wechsler-Bellevue Scale Form II. Usually the partially hearing don't do as well on verbal subtests as do hearing persons.

Tests for the Totally Blind

1. Intellectual Assessment

Wechsler Adult Intelligence Scale-Verbal Section
The totally blind can't respond to the performance section.

Wechsler-Bellevue Scale Form II Verbal Section

Slosson Intelligence Test for Children and Adults
This test is almost completely verbal with the exception of a few performance items at a very low age level. My experience with the test indicates lower results with this test than individual tests because it is based on chronological age over mental age in calculating the intelligence Quotient rather than deviation from the mean scores which are more realistic with adults.

Haptic Intelligence Scale for the Adult Blind
Can be used only with totally blind persons

2. Personality Evaluation

Rotter Incomplete Sentences Blank-Adult Form
The sentence stems can be read to the client and the examiner can record the clients responses.

Item Check List
The items can be read by the examiner and recorded.

Self Description
This also can be read by the examiner.

3. Social Maturity

The Revised Vineland Social Maturity Scale
These interview type items can be read and scored by the examiner.

4. Occupational Interests

California Occupation Interest Inventory
This has been put on tape. A Coxco/Respondex Unit can be used to punch holes in a card to record responses which later can be recorded on a regular answer sheet to score with the usual stencil keys and a profile made in the usual way.

5. Brain Damage

Wechsler Memory Scale Form I or II
This test can be given orally to the blind, with the exception of three designs to copy. The examiner will have to interpolate to make allowance for the client not taking this part. This is the only test I know of that can be given to the totally blind as a measure of brain damage. It also gives some information as to person, place and time which is useful for detecting senility or possible aphasia.

The Non-Language Learning Test
This is a form board on which there are time norms for both the totally blind and the partially sighted persons. It gives some ideas about how well a blind person can use his hands in doing performance types of activities. With some individuals it might be substituted for the Haptic Intelligence Scale for the Adult Blind since it can be done in 15 to 30 minutes in contrast to an hour to two hours for a person to take the Haptic.

Tests for the Partially Sighted

Wechsler Adult Intelligence Scale
Both the verbal and the performance can be given.

Wechsler-Bellevue Scale Form II
Both verbal and performance sections can be given.

Drawing the Human Figure
This with the associations to the test can be given to the partially sighted person.

Rotter Incomplete Sentences Blank-Adult Form

Graham-Kendall Memory-for-Designs Test
This can be used as a measure of organic brain damage.

Revised Vineland Social Maturity Scale
It can be used as a measure of social maturity or as a reflection of deterioration of functioning.

The Peabody Individual Achievement Test
This can be used with the partially sighted since the test material is printed in large type which can be read by them.

Tests for the Physically Handicapped

1. Intellectual Assessment

Wechsler Adult Intelligence Scale
Both the verbal and the performance sections can be given. The cerebral palsy client and some clients with strokes may have difficulty with the performance subtests, but when possible I give these subtests anyway to see how well the person can do with these types of activities. In this case I would consider the verbal section to be the best measure of his intellectual potential.

Wechsler-Bellevue Scale Form II
The same factors would apply here.

Full Range Picture Vocabulary Test
The client points to the best picture of four to define a word. This test can be given to the severely physically handicapped who can not respond verbally. I use it as a screening test to check on intelligence. It is a reasonably good measure of verbal intelligence.

Peabody Picture Vocabulary Test
This can be used in similar circumstances as the Full Range Picture Vocabulary Test.

2. Personality Evaluation

Human Figure Drawings

Sotter Incomplete Sentences Blank-Adult Form

Rorschach Ink Blot Test
This is used on rare occasions with the seriously emotionally disturbed person. The time required for the administration, scoring and interpretation of this test tends to cut down the frequency of its use.

3. Social Maturity

The Vineland Social Maturity Scale
This is used with the mentally retarded as a part of the McDonald Scale in Work Evaluation. It is used with the severely physically handicapped as a measure of deterioration or lack of development.

4. Achievement

The Peabody Individual Achievement Test

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This test can be used with a lot of the physically handicapped as well as the deaf and some subtests with the blind, since responses can be made by pointing or giving a number. Some subtests can be adapted for the blind such as spelling, and general information.

The Wide Range Achievement Test
This is routinely given to almost all clients who go through Work Evaluation as a part of the group testing program. It measures word recognition, spelling and written arithmetic problems.

5. Brain Damage

The Graham-Kendall Memory-for-Designs Test
This is given pretty regularly with physically handicapped clients.

Bender Visual Motor Gestalt Test
This is given occasionally.

Benton Visual Retention Test
This is given on rare occasions.

The Porteus Maze Test
This is a series of mazes from year three to year fourteen and adult which can be given to a client. The premise is on giving the series twice is that the normal person will improve on the second series of mazes and the brain injured person will not.

6. Sensory Processes

Dvorine Color Blindness Test
This is used occasionally to help detect red-green color blindness.

Eisenson's Examining for Aphasia
I use to use this years ago before we had a Speech Therapy Department to help detect expressive or receptive aphasia.

Robert L. Dotson
Psychologist III

In The Courts

A. School system found in violation of section 504 in using I.Q. tests

A state court has ordered the California school system to cease using I.Q. tests to place children in special education classes for the "educable mentally retarded (E.M.R.)," in part because it violates section 504. In the case of Larry P. v. Riles, a class action suit was brought on behalf of black California school children who have been or may in the future be wrongly placed in special education classes for E.M.R. students. The plaintiffs specifically alleged that the standard I.Q. tests used by the California school system in classifying and assigning students to E.M.R. classes were culturally biased and resulted in the misplacement of black students in special education classes, to their educational and social detriment.

In a lengthy opinion, the court found violations of Title VI, the Education for All Handicapped Children Act, and section 504, in that the "defendants have utilized standardized intelligence tests that are racially and culturally biased, have a discriminatory impact on black children, and have not been validated for the purpose of essentially permanent placements of black children into educationally dead-end, isolated and stigmatizing classes for the so-called educable mentally retarded."

Although the plaintiffs did not claim to be handicapped persons, the court ruled that they are still covered under section 504, in that section 504 also protects persons who are regarded as being handicapped.

(For an abstract of this case, readers are referred to Handbook, Appendix IV:A:54.)

IV:A:54 Larry P. v Riles, F. Supp. No. C-71-2270 REP (N.D. Cal. 1979)

California school system's use of unvalidated I.Q. tests in placing black students in special classes for the retarded is a violation of section 504, the equal protection clause, and other statues.

Section 504 covers persons who are regarded as handicapped, as well as those who are actually handicapped.

The plaintiffs, representing the class of California black school children who have been or may in the future be wrongly placed in special classes for the "educable mentally retarded" (E.M.R.), brought this action for declaratory and injunctive relief. The plaintiffs alleged that the California state school system's placement process for E.M.R. classes was unlawfully discriminatory. They specifically alleged that the standard individual intelligence (I.Q.) tests used by the defendants in classifying and assigning students to the E.M.R. classes were culturally biased so as to result in the misplacement of black students in the special classes, to their educational and social detriment. Black children comprise only ten percent of the population of California, yet they make up 25 percent of the students enrolled in E.M.R. classes.

The court's extensive opinion found violations of Title VI of the Civil Rights Act of 1964, the Education of All Handicapped Children Act, and section 504 of the Rehabilitation Act of 1973, in that the "defendants have utilized standardized intelligence tests that are racially and culturally biased, have a discriminatory impact on black children, and have not been validated for the purpose of essentially permanent placements of black children into educationally dead-end, isolated, and stigmatized classes for the so-called educable mentally retarded." The defendants' placement process as a whole violated these federal laws because it was not validated and because it resulted in a large overrepresentation of black school children in the E.M.R. classes. The court relied in part on HEW regulations which require that tests and other evaluation materials be validated for the specific purpose for which they are used (see Appendix III:C:vii, 84.35(b)).

The court ruled that a private action is implied in section 504, as well as in Title VI and in the Education for All Handicapped Children Act. Further, exhaustion of administrative remedies was held not to be required where, as here, the plaintiff relies heavily on alternative statutory and constitutional claims, and such exhaustion would be a time-consuming exercise in futility. In the present case, an HEW official had informed the court before trial that no administrative action against the defendant was in the offing.

The court held that section 504 covers both handicapped persons and those who are regarded as handicapped, so that the plaintiffs' claim not to be handicapped-retarded-was not a bar to relief under the statute.

According to the court, the defendants also violated the equal protection clauses of the federal and California constitutions. The court found unjustified intentional discrimination in the complacement acceptance of the disproportionate enrollment of blacks in special classes. Even had intentional discrimination not been shown, the court indicated that an equal protection violation would have existed under an "intermediate scrutiny" standard of judicial review.

The court granted declaratory relief and (1) permanently enjoined the defendants from using any standardized intelligence test for E.M.R. placement purposes without prior court approval; (2) ordered the defendants to eliminate the disproportionate enrollment of black children in E.M.R. classes; and (3) ordered the defendants to re-evaluate every black child in E.M.R. classes without using I.Q. tests that have not been approved by the court.

B. Zorick V. Tynes, 372 So. 2d 133 (1979)

Section 504 does not apply unless a primary objective of federal assistance is to provide employment.

Florida statute requires trial employment of blind job applicant.

A Florida court has held section 504 of the Rehabilitation Act inapplicable in an action brought by a blind job applicant who was tendered, and then denied, employment as a physical education teacher by a school board because of his disability.

The court, however, upheld a lower court order requiring trial employment of the plaintiff, basing its decision on a Florida statute which requires that incapacity due to a physical handicap be shown before a school employer may refuse employment to a blind applicant on the basis of the disability alone.

Section 504 was held inapplicable on three grounds: (1) pursuant to HEW regulations, no private action claim exists under section 504 where the primary objective of the federal financial aid is not to provide employment; (2) Florida state courts lack the essential procedural devices to determine the adequacy of federal administrative remedies under section 504; (3) the plaintiff's section 504 claim is groundless on the merits, since section 504 does not prohibit federal aid recipients from enforcing standards for physical cacpacities reasonably related to the employment concerned.

*From Handicapped Requirements Handbook, Federal Program Advisory Service, December 1979